



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

August 4, 2017

Greg Lovato
Administrator
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701

Re: Status of Deferral of NPL Listing of the Anaconda Mine Site

Dear Mr. Lovato:

Thank you for your July 31, 2017 letter requesting deferral of the Anaconda Mine Site (Site) from the U.S. Environmental Protection Agency (EPA) to the Nevada Division of Environmental Protection (NDEP). EPA Region 9 appreciates NDEP's cooperation and we are committed to working with the NDEP, the Yerington Paiute Tribe, the Walker River Paiute Tribe, the Bureau of Land Management (BLM), and Atlantic Richfield Company (ARC) to resolve outstanding issues. The most critical issues are ensuring that ARC is committed to performing a CERCLA equivalent Remedial Investigation and Feasibility Study (RI/FS) for the entire Site and ensuring that the deferral documents do not constrain NDEP's authority to select the appropriate CERCLA protective remedy based on the results of RI/FS. Given the concerns EPA has about the Framework Agreement already executed between ARC and NDEP, EPA is particularly concerned about the provisions of the Interim Administrative Order on Consent (AOC) and RI/FS Statement of Work (SOW) that appear pre-decisional, seek to limit the alternatives evaluated in the RI/FS, or indicate a preference for a particular alternative.

The deferral process should also be done in a manner that recognizes Tribal sovereignty for Tribal land and provides for meaningful involvement by the Tribes and community. As noted in the latest draft of the Deferral Agreement, EPA does not intend to defer the response actions on Tribal Lands to NDEP. The Tribes have requested that EPA not defer the Site until the MOUs with the Tribes are executed. The Tribal MOUs are a priority for EPA Region 9 and our goal is to work with the Tribes and NDEP to finalize the MOUs prior to deferral.

Since deferral requires EPA to withdraw its UAO for RI/FS and AOC for removal work at the Site, we cannot act upon your deferral request until EPA's concerns are addressed regarding the operative documents that will govern Site work post deferral. NDEP, ARC, and EPA previously agreed that the operative documents would be in final form and that all the parties would have the opportunity to review them collectively to make an informed decision whether to go forward with the deferral. The operative documents that need to be resolved between EPA, NDEP and ARC are listed below:

- 1) EPA & NDEP Deferral Agreement;
- 2) NDEP/ARC Interim AOC for RI/FS and Remedial Design/Remedial Action (RD/RA) for OU8, Sitewide RI/FS SOW, and OU8 RD/RA SOW; and
- 3) EPA & ARC AOC for Past Costs (including agreement by EPA to withdraw UAO for RI/FS and Removal AOC).

EPA acknowledges the need to expeditiously resolve these issues and is committed to working with NDEP to do so. On July 27, 2017, Region 9 provided our comments on the Interim AOC for RI/FS and RD/RA and corresponding SOWs. Region 9 requests NDEP's response to our comments by August 18, 2017. EPA is available to have discussions with NDEP on these issues both before and after August 18, 2017.

If you have any questions or comments, feel free to contact me at any time.

Sincerely,



Enrique Manzanilla
Director, Superfund Division

cc:

Bradley Crowell, Nevada Department of Conservation and Natural Resources
Brian Amme, Bureau of Land Management
Laurie A. Thom, Yerington Paiute Tribe
Amber Torres, Walker River Paiute Tribe
Jeffrey Page, Lyon County
Dan Newell, City of Yerington
Tom Patton, Singatse Peak Services
Patricia Gallery, Atlantic Richfield